



California Fair Political Practices Commission

December 30, 1985

Lance H. Olson
Olson, Connelly & Hagel
431 J Street, Fourth Floor
Sacramento, CA 95814

Re: Your Request for Advice,
Our File No. A-85-242

Dear Mr. Olson:

This is in response to your letter dated November 25, 1985, seeking advice on behalf of Helen McCloud Thomson. Your request is based upon the following material facts.^{1/}

FACTS

Helen McCloud Thomson is considering running for a seat on the County Board of Supervisors in Yolo County. Ms. Thomson's husband, Captane P. Thomson, M.D., serves as the Director of the Mental Health Services Division within the County Health Department.

The county funds the Mental Health Services Division, in large part, with money received from the State Department of Mental Health pursuant to the Short-Doyle Act (Government Code Sections 5600 et seq.). As a condition precedent to receiving the state funds, the county must agree to provide ten percent of the Division's budget in matching funds.

^{1/} These facts have been provided by Mr. Olson; Mr. Gene Roh, Yolo County Chief Administrative Officer; Ms. O.H. Fifi Zeff, Yolo County Employee Relations Officer; and Dr. Captane P. Thomson.

Dr. Thomson is a civil service employee and is represented by the Yolo County Management Association (YCMA) in salary negotiations with the county. There are approximately 90 employees who are represented by YCMA. Overall, there are approximately 1200 civil service employees in Yolo County. Salary increases for members of YCMA are determined by the meet and confer process, pursuant to state law. Formal negotiations take place between the county's employee relations officer and a representative of the YCMA. The Board of Supervisors gives parameters to its employee relations officer with regard to the total amount of funds available for salary adjustments for employees within each bargaining unit (YCMA is one of seven bargaining units). The Board of Supervisors sets aside funds in the budget for anticipated salary adjustments.

There are two types of salary adjustments which are available to county employees: (1) across the board cost of living adjustments; and (2) equity adjustments. Across the board cost of living adjustments would affect all of the employees within a bargaining unit. Equity adjustments are generally negotiated for specific job classifications within a bargaining unit.

Equity adjustments are determined by surveying "benchmark" counties and comparing the salary range for certain job classifications within Yolo County with similar job classifications within the benchmark counties. Those job classifications whose salary varies more than 5% from the survey are recommended for equity adjustments.

Although the Board of Supervisors could instruct the employee relations officer to negotiate equity adjustments for specific classifications notwithstanding the results of the survey, this has not occurred in the past.

When a proposed salary package for a bargaining unit is presented to the Board of Supervisors (usually after the budget process is complete), the Board can either ratify the package or refuse to ratify the package. The Board cannot amend the package to increase or decrease specific salaries.

Dr. Thomson also receives compensation for providing expert forensic testimony in court. Dr. Thomson does not personally receive additional compensation when he appears as the Director of the Mental Health Services Division; however, when appearing as a private citizen, Dr. Thomson is personally compensated although he must take time off without pay from his county job.

Within the county budget, funds are allocated to the courts to pay for such expert witnesses as may be needed. The Board of Supervisors can increase or decrease the court's request; however, some level of funds must be appropriated for this purpose. Approximately 12-15 psychiatrists comprise the pool from which experts are appointed by the court. The decision to use Dr. Thomson or any of the other psychiatrists as an expert witness in a particular case rests with the court and not with the Board of Supervisors. Dr. Thomson appears as an expert witness in his private capacity approximately 20-30 times a year.

QUESTIONS

1. If Ms. Thomson were elected to the Board of Supervisors would a conflict of interest arise solely from the fact that she is married to the Director of the Mental Health Services Division?

2. During the budget process would Ms. Thomson be prohibited from voting on:

a. The 10% matching funds for the Mental Health Services Division;

b. The final budget for the Health Department;

c. The portion of the court's budget related to expert witness fees;

d. Final approval of the entire county budget?

3. Would Ms. Thomson be prohibited from participating in decisions concerning the salary package for the YCMA bargaining unit?

CONCLUSIONS

1. A conflict of interest does not exist solely because an elected official is married to a public employee within that official's jurisdiction. A conflict occurs only when the public official participates in a decision in which he or she has a financial interest.

2. If elected to the Yolo County Board of Supervisors, Ms. Thomson would be required to disqualify herself from participating in decisions to fund the Mental Health Services

Division and the court appointed expert witnesses. Ms. Thomson would not be required to disqualify herself from participating in decisions to approve the final budget for the County Health Department or the final county budget.

3. Ms. Thomson would not be required to disqualify herself from participating in the decision to accept or reject the Yolo County Management Association's salary package. However, disqualification would be required on any decision which dealt separately with Dr. Thomson's salary.

ANALYSIS

The Political Reform Act (the "Act")^{2/} provides that a public official may not make, participate in making, or in any way attempt to use his or her position to influence a governmental decision in which he or she has a financial interest. Section 87100.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family^{3/} or on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(c).

^{2/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

^{3/} Section 87103 was amended by Chapter 611 of the Statutes of 1985 to include the under-lined language. However, the Commission has previously interpreted the Act's conflict of interest disqualification provisions as including effects upon members of the official's immediate family. See 2 Cal. Adm. Code Section 18702.1.

"Income" is defined in Section 82030 as including "any community property interest in income of a spouse."

Therefore, we begin with the general rule that the income of a spouse is attributed to the public official; accordingly, the public official may not participate in a decision that will have a reasonably foreseeable material financial effect on the source of that income or on the amount of the income to be received.

With respect to the salary of spouses who work for state or local government there are two exceptions to the general rule. Salary from such an agency is not income within the meaning of the Act. Section 82030(b)(2). Thus, the government entity in question is not a source of income under Section 87103(c) and the official may make decisions affecting the agency.

With regard to effects upon the amount of pay received, the recent amendments to Section 87103, cited above, would require disqualification as to decisions effecting a spouse's pay. However, the Commission by regulation has established another exception to the general rule contained in the amended version of Section 87103:

... an official does not have to disqualify himself or herself from a governmental decision if:...

(2) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subsection does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position;

2 Cal. Adm. Code Section
18702.1(c).

Question 2(a) - Mental Health Services Division Budget

It is reasonably foreseeable that a decision by the Board of Supervisors not to match the state funds provided under authority of the Short-Doyle Act could eliminate Dr. Thomson's position as Director of the Mental Health Services Division.

Although the county would still be required to provide some level of mental health services to the indigent population (Welfare and Institutions Code Section 17000), our discussions with the County Chief Administrative Officer lead us to believe that without the state funding, the Mental Health Services Division would not exist. Even though it is unlikely that the Board of Supervisors would forego the state funds, our analysis is concerned with what could be the reasonably foreseeable effects of the full range of a particular governmental decision.

Therefore, because the effect of this decision could result in Dr. Thomson losing his job or being demoted, the exception in the regulation would not be applicable and Ms. Thomson, if elected to the Board of Supervisors, would have to disqualify herself from participating in that decision. Participation includes lobbying other members of the Board in private or being involved in the Board's deliberations on the matter. In addition, a disqualified official may not use his or her official position to in any way attempt to influence the decision; this includes discussing the matter with county staff who are involved in the consideration of the particular item or issue.

Question 2(b) - Health Department Budget

Generally, when a public official is required to disqualify herself from participating in specific decisions which are a part of an overall plan, the Commission has advised the public official that she may participate in the final vote to approve the plan so long as the matters in which she has a conflict have been decided and are no longer subject to modification. (See Commission Advice Letters A-83-163 and A-83-204, copies enclosed).

Therefore, even though Ms. Thomson would be required to disqualify herself from participating in the decision to match the state funds for the Mental Health Services Division, she would be allowed to participate in the decision on the overall budget for the Health Department when that item later comes before the Board.

Question 2(c) - Court Expert Witness Fees

When Dr. Thomson appears in his private capacity as court appointed expert witness, he is not a county employee, but rather a private citizen performing a service for compensation



California Fair Political Practices Commission

January 17, 1986

Lance H. Olson
Olson, Connelly & Hagel
431 J Street, Fourth Floor
Sacramento, CA 95814

Re: Your Request for Follow-Up
Advice
Our File No. A-85-242

Dear Mr. Olson:

This is in response to your letter, dated January 9, 1986, seeking reconsideration and clarification of the advice rendered to Helen McCloud Thomson in our letter of December 30, 1985 (A-85-242).

Subsequent to receiving our letter you have uncovered additional facts regarding the operation of the Short-Doyle Act.^{1/} Previously, you had informed us that Yolo County had the option of not participating in the Short-Doyle program by refusing to allocate the 10 percent in matching funds required by the Short-Doyle Act. We verified this point with the County's Chief Administrative Officer and, therefore, concluded, in our previous letter, that a decision by the Board of Supervisors against allocating the 10 percent matching funds could result in the elimination of the Mental Health Services Division and Dr. Thomson's position as Director of that agency. Based upon those facts, we advised you that if elected to the Board of Supervisors, Ms. Thomson would have to disqualify herself from participating in the decision concerning the matching funds for the county mental health service program.

^{1/} Our discussions with Mr. Norman Black of the Office of Legal Services, Department of Mental Health, confirms your revised interpretation of the Short-Doyle Act.

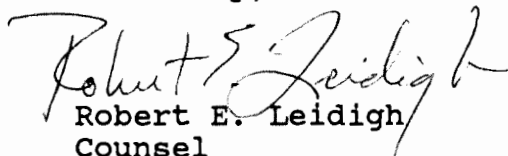
Lance H. Olson
January 17, 1986
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However, further research into this matter indicates that Yolo County does not have the option of not participating in the Short-Doyle program.^{2/} Section 5602 of the Welfare and Institutions Code provides in pertinent part that the "board of supervisors of every county ... shall establish a community mental health service to cover the entire area of the county..." (emphasis added). Additionally, Section 5650 of the Welfare and Institutions Code requires that each county adopt and submit an annual county plan for mental health services to the Director of the State Department of Mental Health.

Clearly, Yolo County is required to participate in the Short-Doyle program. The County's failure to allocate the 10 percent matching funds would only result in the County's forfeiture of the state funds authorized by the Short-Doyle Act and would not result in the elimination of the Mental Health Services Division or Dr. Thomson's position. (Section 5607 of the Welfare and Institutions Code requires that a director be appointed by the local governing body to administer the local mental health services program.)

Based upon this clarification of the requirements of the Short-Doyle Act we now conclude that Ms. Thomson would not have a financial interest in the decision to approve the matching funds for the Mental Health Services Division. Consequently, our advice in the letter of December 30, 1985, is hereby amended to reflect these new facts. Accordingly, if elected to the Board of Supervisors, Ms. Thomson would not be required to disqualify herself from participating in the decision to approve the matching funds for the Division of Mental Health Services, unless the decision would have a reasonably foreseeable effect of at least \$250 on her spouse's earnings, as specified in the previous letter. Based upon all of the facts, that circumstance appears unlikely.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh

BRUCE J. HAGEL
LANCE H. OLSON

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OF COUNSEL
LLOYD G. CONNELLY

JAN 9 11 06 AM '86

January 9, 1986

Mr. Robert Leidigh
California Fair Political
Practices Commission
428 J Street, Suite 800
PO Box 807
Sacramento, CA 95804-0807

Re: Helen Thomson - Your File No. A-85-242

Dear Mr. Leidigh:

I am in receipt of your advice letter of December 30, 1985 directed to me regarding my client, Helen Thomson. On behalf of Mrs. Thomson, I would like to seek both a reconsideration and clarification of one of the conclusions reached in your opinion.

Specifically, I am referring to the conclusion that, if elected to the Yolo County Board of Supervisors, Mrs. Thomson would be required to disqualify herself from participating in decisions to fund the Mental Health Services Division within the Health Agency of Yolo County.

I will begin with my request for reconsideration of this conclusion. Since submitting our request for advice and receiving your letter, we have had an opportunity to speak with the chief legal counsel for the California Department of Mental Health concerning the Short-Doyle Act. At the time that we made our request, we were under an apparent mistaken impression concerning California's various counties' obligations to provide a Mental Health Program pursuant to the Short-Doyle Act. While I pointed out in my original request that local counties provide 10 per cent of the funds necessary to comply with the State mandated Short-Doyle Act while the State provides the remaining 90 per cent, I clearly suggested that the county had the discretion not to fund the 10 per cent match. Since talking to Mr. Carl Elder in the Department of Mental Health, I believe now this may not be entirely accurate. Mr. Elder points out that Welfare and Institutions Code section 5602 mandates

Mr. Robert Leidigh
Re: Helen Thomson
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that every county in the State of California shall establish a community mental health service in compliance with the Short-Doyle Act. Additionally, Mr. Elder points out that, previously, the legislature had permitted small counties to opt out of the Short-Doyle Act; however, this provision of State Law was repealed in 1984. Further, Mr. Elder notes that all counties are required to have a Mental Health Director.

In view of all of the above, apparently the California Department of Mental Health has taken the position that, essentially, counties do not have any option in terms of participating in the Short-Doyle Act. Thus, even if a county were to not provide 10 per cent of the matching funds and thereby lose 90 per cent of the State funding, the county still would have a statutory mandate to comply with the Short-Doyle Act. Furthermore, given the legislature's repeal of the option for small counties to opt out of the program, apparently the State Department of Mental Health's position is that the legislature's intent here was to require all counties to participate in the program, regardless of size.

In view of the above, it would appear that both the legal and practical effect is that all counties must participate in the program. Obviously, the counties would have, certainly, discretion in determining the level of the program that they would have; however, there is no question that such a program must exist and that a director be appointed. In my conversations with Mr. Elder, he specifically used the example of a county which may have had a 200 bed facility and, subsequently, determined that a 1 bed facility would be adequate to comply with the Short-Doyle Act. Mr. Elder suggested that, under such circumstances, the particular county might be inviting a lawsuit from the State for failure to comply with the mandates of Welfare and Institutions Code section 5602.

Mr. Robert Leidigh
Re: Helen Thomson
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I would encourage you to call Mr. Elder at 323-8191 to discuss this matter further. I advised Mr. Elder that you or someone from your staff may, in fact, contact him, and he said that he would be more than pleased to discuss the matter with your further.

Obviously, our position would be that if what I understand Mr. Elder to have said is the case, then there really appears to be, in my opinion, no conflict of interest for Mrs. Thomson to vote on funding of the Mental Health Division's budget. However, I would appreciate your counsel in this area, and reconsideration of this matter.

The second issue concerns clarification of the same conclusion. Specifically, assuming that upon reconsideration you still determine that Mrs. Thomson must abstain from voting on funding the Mental Health Division, we wish to verify that Mrs. Thomson would not be precluded from determining how that funding would be allocated once the decision were made to fund the program. In our recent telephone conversations on this matter, you have suggested that my conclusion in this regard is correct. In other words, once the county determines to fund the Mental Health Services Division, Mrs. Thomson would be free to participate to the fullest extent in determining how those resources would be allocated.

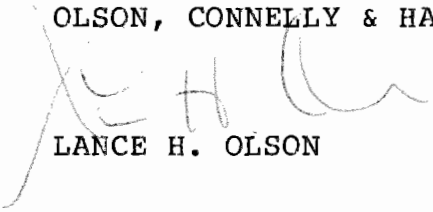
I would like clarification on this matter, as well as the question of whether Mrs. Thomson may operate on the assumption that funding will occur, in view of the fact that the allocation decision may actually occur prior to a vote by the board to fund the division. As I understand the budgetary process in Yolo County, it begins very early and operates on an assumption that the Board of Supervisors will provide 10 per cent of the matching funds well in advance of the board's actual vote to do so.

Mr. Robert Leidigh
Re: Helen Thomson
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Thank you for your consideration of the above two matters,
and I look forward to your response at your earliest
convenience. If I may provide any additional information,
please do not hesitate to contact me directly.

Very truly yours,

OLSON, CONNELLY & HAGEL



LANCE H. OLSON

LHO/fr

cc: Helen Thomson

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OF COUNSEL
LLOYD G. CONNELLY

November 25, 1985

Bob Leidigh, Esq.
General Counsel's Office
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Helen McCloud Thomson

Dear Mr. Leidigh:

This office represents Helen McCloud Thomson. Ms. Thomson is considering running for the County Board of Supervisors in Yolo County. Ms. Thomson's husband, Captane P. Thomson, M.D., is an employee of Yolo County. Specifically, Dr. Thomson serves as Director of Mental Health Services for Yolo County.

Assuming Ms. Thomson were elected supervisor for Yolo County, she has the following questions as they pertain to the Political Reform Act of 1974:

1. Is there a conflict of interest if Ms. Thomson were to be elected supervisor and Dr. Thomson were to remain as director of mental health of Yolo County?
2. More specifically, would Ms. Thomson be prohibited from voting in the following situations:
 - a. for the Yolo county budget;
 - b. for the portion of the budget funding the Health Department within which the Mental Health Services Division is located;
 - c. on management salary agreements which include the Director of Mental Health;
 - d. on a management agreement which considers only the salary of the Director of Mental Health; and
 - e. for the court budgets when Dr. Thomson is occasionally requested to provide private forensic psychiatric evaluations or serve as an expert witness?

Bob Leidigh, Esq.
Re: Helen McCloud Thomson
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To assist you in responding to the above requests, I can provide you with the following background information.

Yolo County is governed by a five (5) member Board of Supervisors which annually must adopt a budget for the operation of the entire county. The budget process begins early in each calendar year, when the Chief Administrative Officer (CAO) for the county meets individually with the various department heads to discuss departmental budgets. Based on these discussions, the CAO prepares a preliminary budget for presentation to the Board of Supervisors in early spring. Budget hearings are scheduled for the summer, and a final budget must be adopted by the Board of Supervisors in early September.

Although Dr. Thomson bears the title of Director of Mental Health Services, he is not a department head within Yolo County. Instead, Dr. Thomson serves as a Division Chief within the Health Department. The department head for the Health Department is Mr. Phil Walker. There are four (4) Divisions, or service areas, within the Health Department which include public health, county hospital, alcohol and drug abuse, and mental health.

Dr. Thomson's Civil Service job classification is represented by the Yolo County Management Association, an employee organization which represents middle management employees. There are approximately 90 employees represented within this management group. I have attached to this letter a copy of the job classes represented by the Management Association. Dr. Thomson's classification is marked by the arrow. Also enclosed with this letter is a Memorandum of Understanding between the County of Yolo and the Yolo County Management Association. You should be aware that Dr. Thomson is not active within the Management Association in any capacity other than as a member.

Salaries for the Management Association are set through the meet and confer process, pursuant to State law. Formal negotiations take place between the County's employee relations officer and a representative of the management

Bob Leidigh, Esq.
Re: Helen McCloud Thomson
November 25, 1985
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unit. The Board of Supervisors gives parameters to its employee relations officer with regard to the total amounts available for each bargaining unit (there are seven (7) within Yolo County). Historically, the County has granted "across the board" cost of living adjustments to its various employee groups. In some years past, there have been equity adjustments for individual classes. These have come about through personnel department surveys of "benchmark" counties, or through Management Association surveys, and go through the personnel department to the Chief Administrative Officer, who then makes a recommendation to the Board of Supervisors.

Historically, salary agreements with the various employee organizations, including the Management Association, are approved after the final budget has been adopted by the Board of Supervisors. For example, in 1985, the General Unit Employee's Association did not settle with the county and the salary ordinance was not adopted for this organization until late September. The Management Association reached its agreement in November and was adopted by the Board of Supervisors on November 19, 1985.

As part of the budget process, the Board, upon the recommendation of the CAO, sets aside funds in reserve for salary settlements when the preliminary budget is presented to it in the spring. After adoption of the salary ordinances, salary increases are absorbed within the various departments' budgets. In the event salary increases exceed the amount reserved, these funds can be supplemented with other county reserve funds, if need be.

Regarding the Mental Health Services Division of the Health Department, with which Dr. Thomson serves as Division Chief, I have the following background information. First, there are approximately 340 employees within the Health Department. Approximately 40 of those employees work for Dr. Thomson within the Mental Health Division. These employees include psychiatrists, psychologists, nurses, social workers, counselors, secretaries and clerks.

Bob Leidigh, Esq.
Re: Helen McCloud Thomson
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The Mental Health Services Division was started in 1965 with Dr. Thomson as psychiatrist, one social worker, a secretary and a \$60,000 budget. Yolo County, as do other California counties, has a Mental Health Services Division due to Section 17000 of the Welfare and Institution Codes, which requires counties to provide mental health care for indigent persons. The 1968 Short-Doyle California Mental Health Act extends that care to include psychiatric need. The State of California provides 90% of the funding for the Mental Health Services Division. The county provides a 10% match.

State mandated services are for involuntary treatment. Community out-patient programs, except case management, are discretionary and optional, based on available funds. Other priorities within the Division include for the care of the chronically mentally ill, services to children, to persons inappropriately placed in jail, and to underserved populations, including ethnic minorities and the physically handicapped.

The State Department of Mental Health has statutory responsibility for regulating levels of services, providing monies, and monitoring quality of local mental health programs. For example, contained in State regulations are staffing mandates for psychiatric coverage of out-patient clinics, day treatment centers and hospital care. Quality control is provided by the California Department of Mental Health by assignment of a program analyst, who reviews the local mental health county plan, and budgets to assure compliance with State law. A program review is also conducted every few years by the State, which includes a review of patient records, compliance with patient rights legislation, and the review of quality of care offered in the local program.

The Board of Supervisors does have the discretion not to fund the 10% match. However, if they fail to do so, they would lose the 90% State funding, yet still fall within the mandates of the Welfare and Institution Code. In Yolo County, the Board of Supervisors has always elected to make its match of 10%.

Bob Leidigh, Esq.
Re: Helen McCloud Thomson
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Since 1965, there has been an overall growth in the Mental Health Services Division. The largest increase overall occurred in 1979 and in 1981, when the State of California mandated and allocated greater grant funds. The growth rate has been fairly regular until 1982 - 1983, when State mental health funds were cut. In that budget year, Yolo County's share of the budget cuts was \$102,000, which the County absorbed through salary savings through unfilled positions. Another cut in State funds occurred in 1983 - 1984 fiscal year; however, this trend was reversed in 1984 - 1985 fiscal year when the State increased funds. However, due to recalculations of local allocations, Yolo County did suffer a \$69,000 cut, which was again absorbed through unfilled staff positions. In 1985 -1986, the mental health funding increased for Yolo County in the amount of \$160,000. In addition, the State of California funded 20 million dollars statewide for the "homeless" program, of which Yolo County received \$120,000.

Although the Mental Health Services Division lost funds due to cut backs in State Funding in the years noted above, this did not change the budget process. The Board of Supervisors adjusted the Division's budget through savings in unfilled positions and then adopted the budget. Salary negotiations were handled separately for all bargaining units, including the Management Association, after the budget process was completed. Although a cut back of \$102,000 may sound significant, it actually represented relatively few positions within a Department of 340 and a Division of 60 employees.

You should also be aware that the Board of Supervisors is not involved in any grievance or disciplinary proceedings (including termination) involving county employees, including Dr. Thomson's position. Those decisions are made by a labor relations panel, whose decisions are final at the county level. Any further action would have to be pursued through the courts.

In addition to his compensation as a salaried county employee, Dr. Thomson is also called upon occasionally to provide expert forensic testimony in court. He is

Bob Leidigh, Esq.
Re: Helen McCloud Thomson
November 25, 1985
Page Six

compensated for his time. The decision to use Dr. Thomson rests with the courts and not the Board of Supervisors. The need for such expert witnesses are generally contained in the Penal Code and various appellate decisions concerning the rights of criminal defendants and the trial courts are generally compelled to use such sources.

The Board of Supervisors does allocate the funds to pay Dr. Thomson when it approves that portion of the county budget which funds the courts in Yolo County.

In answering the above questions, if you are of the opinion that a different conclusion might be reached if changes were made in the existing budget and salary process, I would appreciate your comments. For example, if Dr. Thomson's salary could be procedurally acted upon independent of the other salaries and the budget as a whole, would a different conclusion result?

The information provided in this letter was generally solicited from Dr. Thomson (666-8630), Yolo County Employee Relations Officer, O.H. Fifi Zeff (666-8150) and Yolo County Supervisor Betsy Marchand (666-8623). Please contact them directly, or myself, if you desire any further information.

Thank you for your prompt response to this request.

Very truly yours,

OLSON, CONNELLY & HAGEL



LANCE H. OLSON

LHO/fr

cc: Helen Thomson

for the county; it is not part of his "salary." Consequently, the fees earned as a private expert witness constitute "income" under the Act. Section 82030(b)(2).

Because Dr. Thomson is appointed as an expert witness approximately 20-30 times a year, it is reasonably foreseeable that the decision to approve the funds for the court's expert witness fees would have a material financial effect^{4/} on Dr. Thomson distinguishable from its effect on the public generally. Accordingly, Ms. Thomson would be required to disqualify herself from participating in the decision to approve funds for court appointed expert witnesses.^{5/}

Question 2(d) - Approval of the County Budget

The decision concerning whether or not to approve the final county budget is similar to the decision discussed in Question 2(b). Although there may be separate items within the county budget that require disqualification, Ms. Thomson could vote on the final budget so long as those items that required disqualification are no longer subject to modification.

Question 3 - Yolo County Management Association Salary Package

As previously stated, "income" for the purposes of the Act does not include a spouse's salary from a local agency, and generally a public official is not required to refrain from participating in decisions concerning his or her spouse's salary. However, the Commission has limited this exception to decisions where the official's spouse is not being singled out from other employees in the same job classification or position. (See 2 Cal. Adm. Code Section 18702.1(c)(2).)

The facts presented indicate there is a sufficiently impartial and formalized process for determining salary

^{4/} Pursuant to 2 Cal. Adm. Code Section 18702.1, if the reasonably foreseeable effect of a decision will affect Dr. Thomson's income by \$250 or more, disqualification is required.


^{5/} In a situation similar to this, the Commission advised a County Supervisor that he should not participate in decisions regarding the funding of the court appointed attorney program if such decisions would foreseeably have a material financial effect on his law firm. See Advice Letter A-79-113 (copy enclosed).

Lance H. Olson
December 30, 1985
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adjustments for members of the YCMA, and it does not appear that Dr. Thomson would be singled out from his fellow employees in the YCMA bargaining unit. Therefore, Ms. Thomson would not be required to disqualify herself from participating in the decision to accept or reject the YCMA salary package. However, Ms. Thomson would have to disqualify herself from participating in any decision which treats Dr. Thomson differently from his fellow employees in YCMA.

I hope this advice is helpful to your client; we will be glad to provide further advice as needed.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:JG:nwm
Enclosures



California Fair Political Practices Commission

December 5, 1985

Lance Olson
Olson, Connelly & Hagel
431 J Street, Fourth Floor
Sacramento, CA 95814

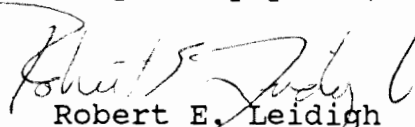
Re: A-85-242

Dear Mr. Olson:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: Helen Thomson

The following are all of the job classes represented by the Yolo County Management Association.

<u>Classification</u>	<u>Salary Range</u> <u>Effective 9/15/85</u>	
Accountant IV	22.68	(2268-2756)
Accountant IV (4)	23.82	(2382-2895)
Administrative Services Officer I	20.50	(2050-2493)
Administrative Services Officer II	23.54	(2354-2862)
Affirmative Action Coordinator	21.62	(2162-2628)
Architectural Contract Administrator	25.07	(2507-3047)
Assessment Office Supervisor	18.49	(1849-2247)
Assistant Assessor	26.56	(2656-3228)
Assistant Auditor-Controller	26.04	(2604-3166)
Assistant County Clerk - Elections	20.14	(2014-2449)
Assistant Director of Social Services	27.70	(2770-3367)
Assistant County Recorder	20.14	(2014-2449)
Assistant Director of Planning	26.15	(2615-3178)
Assistant Director of Public Works (16)	29.44	(2944-3578)
Assistant Treasurer-Tax Collector	21.86	(2186-2658)
Associate Civil Engineer	23.74	(2374-2886)
Chief Appraiser	25.80	(2580-3135)
Chief Deputy Clerk-Recorder	22.69	(2269-2757)
Chief Deputy Site & Building Inspection	23.83	(2383-2896)
Chief Hospital Laboratory Technologist	20.29	(2029-2466)
Chief Investigator (Public Defender)	20.68	(2068-2514)
Chief Investigator (Social Services)	21.83	(2183-2653)
Chief of Environmental Health	24.22	(2422-2944)
Chief of Public Health Laboratory Services	22.70	(2270-2759)
Chief Pharmacist	25.46	(2546-3094)
Civil Engineer Associate	21.51	(2151-2616)
Communications Engineer	22.36	(2236-2717)
Data Processing Operations Coordinator	19.50	(1950-2371)
Data Services Coordinator/Programmer	19.29	(1929-2344)
Deputy Agricultural Commissioner	23.01	(2301-2797)
Deputy Director, HSA Fiscal Services	26.83	(2683-3261)
Deputy Director - Mental Health Services	29.60	(2960-3597)
Deputy Program Coordinator - Alcohol & Drug	22.96	(2296-2792)
Director of Alcohol and Drug	28.64	(2864-3481)
Director of Nursing Services	28.40	(2840-3452)
Director of Parks, Grounds & Museum	24.06	(2406-2924)
Director of Probation Services	24.09	(2409-2927)
Director of Public Health	44.76	(4476-5441)
Director of Public Health Nursing	28.40	(2840-3452)
→ Director/Program Chief of Mental Health (20)	44.76	(4476-5441)
Emergency Services Coordinator	20.15	(2015-2450)
Health Services Agency Accountant	23.12	(2312-2810)
Health Services Agency Administrative Coordinator	23.08	(2308-2805)
Hospital Administrator	31.61	(3161-3842)
Hospital Finance Officer	27.21	(2721-3308)

<u>Classification</u>	<u>Salary Range</u> <u>Effective 9/15/85</u>	
Juvenile Hall Superintendent	17.70	(1770-2153)
Librarian III	19.65	(1965-2388)
Librarian III (31)	20.63	(2063-2507)
Manager of Buildings & Grounds	21.87	(2187-2659)
Manager of Purchasing Services	24.35	(2435-2960)
Manpower Coordinator	19.80	(1980-2407)
Manpower Fiscal Officer	19.80	(1980-2407)
Medical Records Administrator (30)	18.14	(1814-2205)
Mental Health Program Coordinator	28.19	(2819-3426)
Nursing Educator/Quality Assurance Coordinator	25.01	(2501-3040)
Personnel Analyst I	16.21	(1621-1970)
Personnel Analyst II	18.34	(1834-2229)
Personnel Analyst III	20.14	(2014-2449)
Planning and Evaluation Health Specialist	24.31	(2431-2956)
Program Director	24.71	(2471-3004)
Psychiatrist (21)	41.46	(4146-5040)
Road Maintenance Superintendent	22.77	(2277-2769)
Senior Building Inspector	20.49	(2049-2491)
Senior Civil Engineer	26.41	(2641-3211)
Senior Manpower Coordinator (15)	20.54	(2054-2497)
Staff Services Manager I	19.76	(1976-2402)
Staff Services Manager II	22.76	(2276-2768)
Supervising Investigator	21.85	(2185-2655)
Supervising Probation Officer	21.39	(2139-2600)
Systems and Programmer Supervisor	23.41	(2341-2846)
Telecommunications Manager	20.74	(2074-2521)
Transit Coordinator	26.41	(2641-3211)
Veterans Services Officer	20.42	(2042-2482)

MEMORANDUM OF UNDERSTANDING

Between the County of Yolo and the Yolo County Management Association

COMPENSATION

Salaries for all members of the Management Unit will be increased by 4.5% retroactive to September 15, 1985. See Attachment A for salary ranges effective September 15, 1985.

MANAGEMENT BENEFIT PACKAGE

I. MANAGEMENT BENEFITS

A. General

1. Benefits are based on fiscal years. All claims to be charged to a year must be submitted no later than the last working day of the fiscal year. Claims for benefits cannot extend beyond one year. Since claims are on a reimbursement basis, proof of original payment for services must be provided. All claims must be routed through the Personnel Department.
2. Employees in new positions designated as "management" during the year by the Board of Supervisors will receive a prorated share of fixed benefits and discretionary benefits on a monthly basis from the first day of the month in which the Board action is effective. In the case of retroactive effective dates, amounts already contributed by the County will be deducted from the prorated management benefit package total.
3. If, at any time, the cost of the fixed benefits exceeds the employee's available balance, the excess amount will be deducted from his/her regular wages.
4. The maximum amount available to each management employee during 1985/86, will be \$3,786 for the benefits as outlined. The maximum amount for 1986/87 will be \$3,807.

5. If a management employee is placed on leave-of-absence-without-pay status, the management benefit package will be prorated for the year.
 6. Any remaining balance (must be at least ten dollars) in the management benefit package can be transferred to one of the County's deferred compensation plans, provided the employee completes the necessary forms required by the respective plan.
- B. Fixed Benefits
1. Health Coverage
 - a. Management employees may select from Kaiser, Stay Well, or Foundation health plans, with costs to be paid from the management benefit package. Only one plan may be selected. No changes in coverage may be made except as provided in the agreements with the health plan operators.
 2. Dental Coverage
 - a. The dental plan is mandatory for all employees regardless of their enrollment status in a medical plan. Additionally, dental coverage for the employee's spouse and dependents is made available, and the management benefit package must be used to pay the cost of the coverage.
- C. Discretionary Benefits (Employee must file individual claims for reimbursement)
1. Physical Examination - A management employee may be reimbursed up to \$100 for the cost of a physical examination performed by a private physician, if his/her health plan does not provide physical examinations at no charge. Claims for reimbursement must be routed through the Personnel Department and must be accompanied by a receipt or statement from the physician indicating that a physical examination has been performed. Evidence of payment is also required.
 2. Unmet medical, dental, and prescription costs - not covered by the County's medical/dental plans can be reimbursed from the discretionary benefit balance.
 3. Vision Care - Management employees may be reimbursed for eye examinations and corrective lenses for themselves, spouses, and dependents. Claims for reimbursement must be accompanied by a receipt or statement from the physician indicating that an eye examination has been performed and/or that corrective lenses have been purchased. Evidence of payment is also required.
 4. Membership in Professional Organizations - Management employees may be reimbursed for dues for professional organizations deemed by Department Heads to be directly job related and in the County's interest. Not covered are dues for service, social, fraternal, cultural, political, religious, and labor organizations. Also, dues statements for professional organizations should be accompanied by

receipts showing the periods covered by the membership(s). Claims must be accompanied by evidence of payment.

5. Life Insurance - Management employees may be reimbursed for life insurance policies on the employee, spouse and dependents, as selected by the employee. Claims for reimbursement must be routed through the Personnel Department and must be accompanied by a receipt or statement from the agent or carrier. A copy of the face sheet of the policy must accompany the initial claim to establish that the policy has been written. Evidence of payment must be provided.
6. Disability Insurance - Same procedure as for life insurance coverage.
7. Professional Liability Insurance - Same procedure as for life insurance coverage.
8. Job-related Training - Reimbursement for the cost of training approved by the Department head as both job related and in the County's interest.

Types of acceptable training include: academic training; workshops; seminars; and other training activities designed to improve professional skills.

Training designed for self improvement is not reimbursable. (Transcendental meditation, ESP, speed reading, job stress and memory training have all been specifically defined as not reimbursable.)

Allowable training may take place during an employee's normal work day.

Reimbursement is allowed for technical books and periodicals, as deemed job related by the Department Head. These may be retained as the property of the employee.

9. Management employees required to use private vehicles for County business can use their discretionary balances to pay any increased vehicle insurance costs resulting from such use.
10. Work-related Equipment - Work-related equipment may be purchased by the employee and reimbursed from the discretionary balance of the management benefit package if the following criteria is met:
 - a. equipment must specifically relate to the employee's job duties;
 - b. equipment shall be retained at the workplace during customary work hours;
 - c. reimbursement for work-related equipment is limited to \$300 per item and \$500 per fiscal year. Data processing and word processing terminals and auxiliary equipment and software are not subject to the \$300 and \$500 monetary limits identified

above. The employee acknowledges that the County shall not compensate the employee for losses or damages caused to the equipment purchased out of the management benefit package;

- d. the management employee shall submit a written justification to the Department Head, indicating how the item relates to his/her job duties; and
 - e. the Department Head must approve the request, including the justification statement, and proof of purchase.
11. Membership in a Health Club - for the purpose of physical fitness and is authorized for reimbursement for the employee only.
12. Car Allowance - Management employees may choose to receive a \$50 per month car allowance from their management benefit package. A claim may only be submitted once during the fiscal year. Claim will activate monthly car allowance beginning with month claim is filed continuing forward, and retroactivity is not permitted.

II. VACATION

Management personnel shall receive the same vacation schedule as General Unit employees receive each year.

III. HOLIDAYS

Management personnel shall receive the same holidays and floating holidays as general Unit employees.

IV. ADMINISTRATIVE LEAVE

Administrative leave for 1985/86 and 1986/87 will be 80 hours. Time usage of such leave is subject to approval of the Department Head, and must be taken within the fiscal year.

Management employees are entitled to administrative leave on the date they become members of the Management unit. In the event a Management employee terminates employment, the employee will not be required to pay back any portion of administrative leave previously taken, nor will the County pay any Management employee for administrative leave left on the records after termination of employment. For management employees hired after July 1, administrative leave shall be earned on a monthly basis and shall be prorated, based on the date the employee became part of the unit.

V. VACATION BUY BACK

Any Management employee accruing vacation at the rate of 15 working days or more per year may receive an equivalent cash payment for 12 vacation days per fiscal year.

VI. RETIREMENT

County will continue to pay the 7% employee's portion of retirement for Management employees. County will pay up to \$12.50 per month toward health insurance coverage for any Management employee who retires on or after July 1, 1982, with at least 20 years of service credit with the County.

VII. DISABILITY INSURANCE

County Disability Insurance (CDI)

1. County agrees to provide disability benefits of 75% of gross pay for a maximum of 52 weeks from the date disability payments commence.
2. Benefits may begin after the first consecutive seven (7) calendar days of disability or the first day of hospitalization, whichever comes first.
3. A disabled employee may, at this/her option, use all or part of accrued sick leave, vacation, administrative leave and/or floating holiday leave during this seven (7) day waiting period.

TERMS AND CONDITIONS

COUNTY and ASSOCIATION agree that so long as the existing rights of Management employees are preserved, there is no need for a formal written document in the form of a labor contract between the County and Association. The County recognizes that this agreement in no way abrogates the right of the Association as a recognized employee organization and the representative of the employees in the Management Unit, to notification in the event the County proposes any changes in policy which affect wages, hours or terms and conditions of employment of members of the unit, nor the Association's right to request to meet and confer on such proposed changes pursuant to the Meyers Milias Brown Act, Government Code Section 3504.5.

To update current practices and policies applicable to employees in the Management Unit, County and Association have agreed that certain County Code sections must be updated or changed to reflect current practice. Until those changes are effectuated, it is agreed that any provisions in the MOU between County and Association, which expired on September 15, 1985, which are in variance from the County Code, shall continue to be applicable to employees in this unit.

The County agrees to make the following amendments to the County Code:

1. Yolo County Code Section 2-6.21.1 Administrative Leave, shall be amended to reflect the following concept, with exact language to be drafted by the County Counsel:

Certain County employees in units other than the general unit, supervisory unit, deputy sheriff's unit, and investigators unit, and

certain unrepresented employees shall be entitled to annual administrative leave (non-accumulative) which is to compensate for overtime, night meetings, and other work related activities; provided however, that the amount of such leave shall be as set forth in MOU for represented employees and in administrative policy for unrepresented employees. By non-accumulative is meant that any of the annual administrative leave not used during a fiscal year is lost and cannot be carried forward to a later fiscal year. Arrangements to take administrative leave shall be between the employee and his/her department head. There is no countywide restriction on an employee who has accrued administrative leave taking such leave in conjunction with other accrued leaves, however, department may establish any rules regarding using administrative leave as are reasonable in light of the department's operation.

2. Yolo County Code Section 2-6.40 shall be revised to reflect the current practice regarding Industrial Accidents/on the job injuries and illnesses which is basically set forth in MOU Section Article V, Sections B and C.
3. Yolo County Code Section 2-6.36.2.c Maternity Leave shall be amended to reflect the current practice of allowing up to 12 weeks of such leave.
4. Yolo County Code Section 2-6.34.b.(1) shall be revised to reflect the current practice of 32 hours of floating holiday time.
5. Yolo County Code Section 2-6.50 shall be revised to reflect that performance evaluations which are less than satisfactory may be grieved through Step 2 of the formal procedure. Section 2-6.50.g.(3) shall be revised to state that the grievant shall bear one-half the cost of the Labor Relations Panel and any mutually agreed upon transcript or reporter fees.
6. The disciplinary procedure currently contained in Article XIII of the MOU shall be amended into the Yolo County Code to apply to Management employees. Section L shall be changed to reflect current practice.

COUNTY and ASSOCIATION agree that certain rules and regulations appropriately belong in policy or administrative rule rather than ordinance. The parties agree that the County Administrator will issue an administrative policy memorandum to all Department Heads dealing with those subjects. That policy memorandum shall include the following:

The following administrative procedures shall apply for all employees in the Management Unit:

1. Personnel Files

1.1 Personnel files shall be held to be confidential.

1.2 Management employees shall be allowed to review their personnel files on request.

- 1.3 Management employees may respond in writing or personally to any information in their files and any written response shall become a permanent part of the employees personnel record.
- 1.4 Personnel files shall contain only job related material and management employees shall be provided with a copy of every document placed in their files at the time the document is placed in the file.
- 1.5 Generally speaking matters of a derogatory nature which do not lead to disciplinary action within six months shall not be used as a basis for future disciplinary action based solely on that matter, but may be used in an accumulation of matters of a derogatory nature which lead to disciplinary action. This limitation shall not apply where a criminal action is involved.
- 1.6 At the time of evaluation, any materials collected in a departmental working file shall be either placed in the official personnel file, incorporated in the evaluation, or be destroyed. Materials maintained in a working file shall not be used as the basis for discipline unless properly placed in the personnel file with a copy to the employee.
- 1.7 Placement of material in a personnel file shall be grievable through Step 2 of the formal grievance procedure, except that formal letters of reprimand may be grieved up to and including appeal to the Labor Relations Panel.

2. Performance Evaluations

- 2.1 Management employees have the right to respond in writing to a performance evaluation and may also submit an appeal to the department head raising specific issues of disagreement, where the overall rating is less than satisfactory. The employees response or rebuttal to the evaluation shall be attached to the evaluation and become a permanent part of the personnel file.

3. Reinstatement of sick leave on reinstatement after layoff.

- 3.1 Employees receiving a sick leave payoff on layoff may, if reinstated during the specified reinstatement period repay the full amount of sick leave payoff received and have his/her former sick leave balance restored. The payment in full to the County must be made prior to reinstatement to exercise this option.

4. Out-of-class pay.

- 4.1 Where an employee is assigned to work out-of-class, a management employee shall receive the minimum step in the new range which is no less than a 5% increase in compensation, if the out-of-class work involves work in a position having a higher salary range. Where a management employee is assigned out-of-class work and is subsequently reclassified to the higher position, if there is no break in service in the higher position, the

management employee shall receive service time for purposes of advancement of salary in that classification.

FOR THE ASSOCIATION

KEN AKINS, Negotiator

LUCILLE DEJANVIER
Vice President

STAN KWAN

FOR THE COUNTY

O. H. FIFI ZEFF, Esq.
Employee Relations Officer

FLOYD MCCAIN
Director of Personnel

The following are all of the job classes represented by the Yolo County Management Association.

<u>Classification</u>	<u>Salary Range</u> <u>Effective 9/15/85</u>	
Accountant IV	22.68	(2268-2756)
Accountant IV (4)	23.82	(2382-2895)
Administrative Services Officer I	20.50	(2050-2493)
Administrative Services Officer I	23.54	(2354-2862)
Affirmative Action Coordinator	21.62	(2162-2628)
Architectural Contract Administrator	25.07	(2507-3047)
Assessment Office Supervisor	18.49	(1849-2247)
Assistant Assessor	26.56	(2656-3228)
Assistant Auditor-Controller	26.04	(2604-3166)
Assistant County Clerk - Elections	20.14	(2014-2449)
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Chief of Public Health Laboratory Services	22.70	(2270-2759)
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MEMORANDUM OF UNDERSTANDING

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MANAGEMENT BENEFIT PACKAGE

I. MANAGEMENT BENEFITS

A. General

1. Benefits are based on fiscal years. All claims to be charged to a year must be submitted no later than the last working day of the fiscal year. Claims for benefits cannot extend beyond one year. Since claims are on a reimbursement basis, proof of original payment for services must be provided. All claims must be routed through the Personnel Department.
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3. If, at any time, the cost of the fixed benefits exceeds the employee's available balance, the excess amount will be deducted from his/her regular wages.
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receipts showing the periods covered by the membership(s). Claims must be accompanied by evidence of payment.

5. Life Insurance - Management employees may be reimbursed for life insurance policies on the employee, spouse and dependents, as selected by the employee. Claims for reimbursement must be routed through the Personnel Department and must be accompanied by a receipt or statement from the agent or carrier. A copy of the face sheet of the policy must accompany the initial claim to establish that the policy has been written. Evidence of payment must be provided.
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VI. RETIREMENT

County will continue to pay the 7% employee's portion of retirement for Management employees. County will pay up to \$12.50 per month toward health insurance coverage for any Management employee who retires on or after July 1, 1982, with at least 20 years of service credit with the County.

VII. DISABILITY INSURANCE

County Disability Insurance (CDI)

1. County agrees to provide disability benefits of 75% of gross pay for a maximum of 52 weeks from the date disability payments commence.
2. Benefits may begin after the first consecutive seven (7) calendar days of disability or the first day of hospitalization, whichever comes first.
3. A disabled employee may, at this/her option, use all or part of accrued sick leave, vacation, administrative leave and/or floating holiday leave during this seven (7) day waiting period.

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To update current practices and policies applicable to employees in the Management Unit, County and Association have agreed that certain County Code sections must be updated or changed to reflect current practice. Until those changes are effectuated, it is agreed that any provisions in the MOU between County and Association, which expired on September 15, 1985, which are in variance from the County Code, shall continue to be applicable to employees in this unit.

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- 1.3 Management employees may respond in writing or personally to any information in their files and any written response shall become a permanent part of the employees personnel record.
- 1.4 Personnel files shall contain only job related material and management employees shall be provided with a copy of every document placed in their files at the time the document is placed in the file.
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 - 4.1 Where an employee is assigned to work out-of-class, a management employee shall receive the minimum step in the new range which is no less than a 5% increase in compensation, if the out-of-class work involves work in a position having a higher salary range. Where a management employee is assigned out-of-class work and is subsequently reclassified to the higher position, if there is no break in service in the higher position, the